

REMARKS/ARGUMENTS

Claims 68-145 are pending. By this amendment, claims 68, 82, 95 and 102 are amended, and new claims 105-145 are added. Reconsideration in view of the following remarks is respectfully requested.

At the outset Applicants appreciate the courtesy extended by Examiner Douglas during a telephonic interview conducted on August 19, 2010. The substance of the telephone interview is discussed herein. In addition to the items discussed during the interview, new claims 105, 107, 109, 121, 128 and 144 are added reciting that the frame and the shell portion (or the shell and cushion unit) are removably attachable to and detachable from each other and new claims 106, 108, 110, 122, 129 and 145 are added reciting that the ring-shaped member and the shell portion are removably attachable to and detachable from each other.

The Office Action objects to the amendment filed March 10, 2010, asserting that it introduces “new matter” into the disclosure. Specifically, the Office Action asserts that “frame edges”, “frame ribs” and “ring-shaped member” are not supported by the original disclosure. However, as discussed during the interview, each of these terms has claim support.

For example, the original specification supports “frame ribs” at least at paragraph [0247] which refers to the frame as having “projecting ribs 40.7.” The projecting ribs are clearly visible in at least Figs. 14-18. In at least Fig. 14-18, the projecting ribs 40.7 are illustrated connected to edges of the frame 40. One example of the “ring-shaped member” is retaining ring 60, which is illustrated in Figs. 7-9, 11 and 26-29. See [0285] to [0292], for example. Accordingly, withdrawal of the rejection is requested.

The Office Action rejects claims 68-74, 77-87, 90-98 and 101-104 under 35 U.S.C. § 103(a) over McCall (U.S. Patent No. 5,921,239). This rejection is respectfully traversed.

McCall does not disclose or suggest a rigid frame including at least one frame edge shaped to fit into and be secured within a frame-receiving channel with the edge engaging the front and rear surfaces of the frame-receiving channel, as recited in independent claims 68, 82 and 95. In contrast, in McCall, the frame 20 is mounted for slidble movement along the mask body 14. A spacer 25 is positioned between the frame and the seal 12. The spacer 25 controls the relative amount of force applied to various areas of the seal 12 by the frame 20. Increased extension of the ratchet end 70 of the spacer towards the seal 12 will result in a greater pressing of the seal by the spacer 25 in those areas, and a consequential backing off or reduction in pressure on the nose bridge and the upper jaw of the patient. See col. 4, lines 7-19.

Thus, McCall does not disclose or teach the claimed structure, as agreed during the telephonic interview.

Further, McCall does not disclose or suggest a plurality of vent holes provided in the shell portion as recited in independent claims 68, 82 and 95, and in fact appears to teach away from the claimed vent location, as McCall notes the problem of noisy vents when placed on the mask body (see col. 1, line 62- col. 2, line 8). Thus, McCall teaches away from the Examiner's suggested modification.

Further, as admitted in the Office Action, McCall does not disclose the ring-shaped member and the frame being formed from a common material as recited in claims 69, 79, 83, 93 and 96. Instead, the Office Action merely concludes that such would have been obvious to provide the advantage of lower manufacturing costs. The Office Action fails to consider the different functionality of the shell surface 106 (asserted to be the ring-shaped member) as part of the outer shell of the ball and socket unit 46, and the frame 20 in the obviousness conclusion.

The Office Action fails to provide any evidence as to why it would have been obvious to make these disparate elements from a common material.

For the above reasons, it is asserted that independent claims 68, 82 and 95, and all claims dependent therefrom, would not have been obvious over McCall. Withdrawal of the rejection is requested.

The Office Action rejects claims 75, 76, 88, 89, 99 and 100 under 35 U.S.C. § 103(a) over McCall (U.S. Patent No. 5,921,239) in view of Scarberry (U.S. Patent No. 6,397,847). This rejection is respectfully traversed.

Because claims 75, 76, 88, 89, 99 and 100 depend from independent claims 68, 82 or 95, and because Scarberry does not remedy the above-noted deficiencies of McCall, it is asserted that claims 75, 76, 88, 89, 99 and 100 would not have been obvious over McCall in view of Scarberry. Withdrawal of the rejection is requested.

New claims 105-145 are believed to recite features not disclosed in the applied references.

The Commissioner is hereby authorized to charge any deficiency, or credit any overpayment, in the fee(s) filed, or asserted to be filed, or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Account No. 14-1140 under Order No. PTB-4398-474.

Should the Examiner believe that anything further is desirable to place the application in better condition for allowance, he is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,

NIXON & VANDERHYE P.C.

By: _____ /Paul T. Bowen/
Paul T. Bowen
Reg. No. 38,009

PTB:DJZ/vjw
901 North Glebe Road, 11th Floor
Arlington, VA 22203-1808
Telephone: (703) 816-4000
Facsimile: (703) 816-4100